



Reprinted
February 21, 2003

SENATE BILL No. 386

DIGEST OF SB 386 (Updated February 20, 2003 3:05 PM - DI 92)

Citations Affected: IC 6-3.1; noncode.

Synopsis: Venture capital investment tax credit. Specifies that a pass through entity is eligible for the venture capital investment tax credit for investments made in qualified Indiana businesses. Eliminates certain requirements that a business must meet in order to be certified as a qualified Indiana business. Sets forth procedures for the department of commerce to certify that a taxpayer is entitled to a venture capital investment tax credit. Provides that if a taxpayer carries over any credit amount to the succeeding year, the amount carried over does not count toward the \$10,000,000 in maximum allowable credits for the succeeding year. Provides that notwithstanding P.L. 192-2002(ss), the venture capital investment tax credit applies to taxable years beginning after December 31, 2002.

Effective: January 1, 2003 (retroactive).

Kenley, Simpson, Clark

January 16, 2003, read first time and referred to Committee on Economic Development and Technology.
February 4, 2003, amended, reported favorably — Do Pass.
February 20, 2003, read second time, amended, ordered engrossed.

SB 386—LS 7582/DI 101+



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 386

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-3.1-24-5, AS ADDED BY P.L.192-2002(ss),
2 SECTION 119, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 5. As used
4 in this chapter, "taxpayer" means an individual or entity, **including a**
5 **pass through entity**, that has any state tax liability.
6 SECTION 2. IC 6-3.1-24-6, AS ADDED BY P.L.192-2002(ss),
7 SECTION 119, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 6. A
9 taxpayer that:
10 (1) provides qualified investment capital to a qualified Indiana
11 business; **and**
12 (2) **fulfills the requirements of the department of commerce**
13 **under section 12.5 of this chapter;**
14 is entitled to a credit against the person's state tax liability in a taxable
15 year equal to the amount specified in section 10 of this chapter.
16 SECTION 3. IC 6-3.1-24-7, AS ADDED BY P.L.192-2002(ss),
17 SECTION 119, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 7. (a) The department of commerce shall certify that a business is a qualified Indiana business if the department determines that the business:

(1) is a high growth company that:

(A) is entering a new product or process area;

(B) has a substantial number of employees in jobs:

(i) requiring postsecondary education or its equivalent; or

(ii) that are in occupational codes classified as high skill by the Bureau of Labor Statistics; United States Department of Labor; and

(C) has a substantial number of employees that earn at least one hundred fifty percent (150%) of Indiana per capita personal income;

(2) has its headquarters in Indiana;

(3) (2) is primarily focused on **commercialization of** research and development, technology transfers, or the application of new technology, or is determined by the department of commerce to have significant potential to:

(A) bring substantial capital into Indiana;

(B) create jobs;

(C) diversify the business base of Indiana; or

(D) significantly promote the purposes of this chapter in any other way;

(4) (3) has had average annual revenues of less than ten million dollars (\$10,000,000) in the two (2) years preceding the year in which the business received qualified investment capital from a taxpayer claiming a credit under this chapter;

(5) (4) has:

(A) at least fifty percent (50%) of its employees residing in Indiana; **and or**

(B) at least seventy-five percent (75%) of its assets located in Indiana; and

(6) (5) is not engaged in a business involving:

(A) real estate;

(B) real estate development;

(C) insurance;

(D) professional services provided by an accountant, a lawyer, or a physician;

(E) retail sales, except when the primary purpose of the business is the development or support of electronic commerce using the Internet; or

(F) oil and gas exploration.



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(b) A business shall apply to be certified as a qualified Indiana business on a form prescribed by the department **of commerce**.

(c) If a business is certified as a qualified Indiana business under this section, the department **of commerce** shall provide a copy of the certification to the investors in the qualified Indiana business for inclusion in tax filings.

(d) The department **of commerce** may impose an application fee of not more than two hundred dollars (\$200).

SECTION 4. IC 6-3.1-24-9, AS ADDED BY P.L.192-2002(ss), SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 9. (a) The total amount of tax credits that may be allowed under this chapter in a particular calendar year **for qualified investment capital provided during that calendar year** may not exceed ten million dollars (\$10,000,000). **The department of commerce may not certify a proposed investment plan under section 12.5 of this chapter if the proposed investment would result in the total amount of the tax credits certified for the calendar year exceeding ten million dollars (\$10,000,000). An amount of an unused credit carried over from a previous calendar year may not be considered in determining the amount of proposed investments that the department of commerce may certify under this chapter.**

(b) Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for providing qualified investment capital to a qualified Indiana business after December 31, 2008. **However, this subsection may not be construed to prevent a taxpayer from carrying over to a taxable year beginning after December 31, 2008, an unused tax credit attributable to an investment occurring before January 1, 2009.**

SECTION 5. IC 6-3.1-24-12, AS ADDED BY P.L.192-2002(ss), SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 12. If the amount of the credit determined under section 10 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the **taxpayer's** following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback **or a refund of any unused credit amount.**

SECTION 6. IC 6-3.1-24-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS



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[EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 12.5. (a)
A taxpayer wishing to obtain a credit under this chapter must apply to the department of commerce for a certification that the taxpayer's proposed investment plan would qualify for a credit under this chapter.

(b) The application required under subsection (a) must include:

- (1) the name and address of the taxpayer;
- (2) the name and address of each proposed recipient of the taxpayer's proposed investment;
- (3) the amount of the proposed investment;
- (4) a copy of the certification issued under section 7 of this chapter that the proposed recipient is a qualified Indiana business; and
- (5) any other information required by the department of commerce.

(c) If the department of commerce determines that:

- (1) the proposed investment would qualify the taxpayer for a credit under this chapter; and
- (2) the amount of the proposed investment would not result in the total amount of tax credits certified for the calendar year exceeding ten million dollars (\$10,000,000);

the department of commerce shall certify the taxpayer's proposed investment plan.

(d) To receive a credit under this chapter, the taxpayer must provide qualified investment capital to a qualified Indiana business according to the taxpayer's certified investment plan within two (2) years after the date on which the department of commerce certifies the investment plan.

(e) Upon making the investment required under subsection (d), the taxpayer shall provide proof of the investment to the department of commerce.

(f) Upon receiving proof of a taxpayer's investment under subsection (e), the department of commerce shall issue the taxpayer a certificate indicating that the taxpayer has fulfilled the requirements of the department of commerce and that the taxpayer is entitled to a credit under this chapter.

(g) A taxpayer forfeits the right to a tax credit attributable to an investment certified under subsection (c) if the taxpayer fails to make the proposed investment within the period required under subsection (d).

SECTION 7. IC 6-3.1-24-13, AS ADDED BY P.L.192-2002(ss), SECTION 119, IS AMENDED TO READ AS FOLLOWS



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[EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 13. ~~(a)~~ To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department, **along with the taxpayer's state tax return or returns, proof that the taxpayer provided qualified investment capital to a qualified Indiana business a copy of the certificate issued by the department of commerce to the taxpayer under section 12.5(f) of this chapter** and all information that the department determines is necessary for the calculation of the credit provided by this chapter.

(b) The department shall record the time of filing of each return claiming a credit under section 6 of this chapter and shall, except as provided in subsection (c), grant the credit to the taxpayer, if the taxpayer otherwise qualifies for a tax credit under this chapter, in the chronological order in which the return is filed in the calendar year.

(c) If the total credits approved under this section equal the maximum amount allowable in a calendar year, a return claiming the credit filed later in that calendar year may not be approved.

SECTION 8. [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]
(a) Notwithstanding P.L.192-2002(ss), SECTION 207, IC 6-3.1-24, as added by P.L.192-2002(ss), SECTION 119, applies to taxable years beginning after December 31, 2002.

(b) The following statutes, all as amended by this act, apply to taxable years beginning after December 31, 2002:

(1) IC 6-3.1-24-5.

(2) IC 6-3.1-24-6.

(3) IC 6-3.1-24-7.

(4) IC 6-3.1-24-9.

(5) IC 6-3.1-24-12.

(6) IC 6-3.1-24-13.

(c) IC 6-3.1-24-12.5, as added by this act, applies to taxable years beginning after December 31, 2002.

SECTION 9. An emergency is declared for this act.



SENATE MOTION

Mr. President: I move that Senator Clark be added as coauthor of Senate Bill 386.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 386, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 5, after "on" insert "**commercialization of**".

and when so amended that said bill do pass.

(Reference is to SB 386 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 386 be amended to read as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 6-3.1-24-6, AS ADDED BY P.L.192-2002(ss), SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 6. A taxpayer that:

(1) provides qualified investment capital to a qualified Indiana business; **and**

(2) **fulfills the requirements of the department of commerce under section 12.5 of this chapter;**

is entitled to a credit against the person's state tax liability in a taxable year equal to the amount specified in section 10 of this chapter."

Page 3, line 5, after "(\$10,000,000)." insert **"The department of commerce may not certify a proposed investment plan under section 12.5 of this chapter if the proposed investment would result in the total amount of the tax credits certified for the calendar year exceeding ten million dollars (\$10,000,000). An amount of an unused credit carried over from a previous calendar year may not be considered in determining the amount of proposed investments that the department of commerce may certify under this chapter."**

Page 3, line 8, after "2008." insert **"However, this subsection may not be construed to prevent a taxpayer from carrying over to a taxable year beginning after December 31, 2008, an unused tax credit attributable to an investment occurring before January 1, 2009."**

Page 3, line 11, delete "(a)".

Page 3, delete lines 20 through 42.

Page 4, delete line 1, begin a new paragraph and insert:

"SECTION 5. IC 6-3.1-24-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: **Sec. 12.5. (a) A taxpayer wishing to obtain a credit under this chapter must apply to the department of commerce for a certification that the taxpayer's proposed investment plan would qualify for a credit under this chapter.**

(b) The application required under subsection (a) must include:

- (1) the name and address of the taxpayer;**
- (2) the name and address of each proposed recipient of the taxpayer's proposed investment;**
- (3) the amount of the proposed investment;**



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(4) a copy of the certification issued under section 7 of this chapter that the proposed recipient is a qualified Indiana business; and

(5) any other information required by the department of commerce.

(c) If the department of commerce determines that:

(1) the proposed investment would qualify the taxpayer for a credit under this chapter; and

(2) the amount of the proposed investment would not result in the total amount of tax credits certified for the calendar year exceeding ten million dollars (\$10,000,000);

the department of commerce shall certify the taxpayer's proposed investment plan.

(d) To receive a credit under this chapter, the taxpayer must provide qualified investment capital to a qualified Indiana business according to the taxpayer's certified investment plan within two (2) years after the date on which the department of commerce certifies the investment plan.

(e) Upon making the investment required under subsection (d), the taxpayer shall provide proof of the investment to the department of commerce.

(f) Upon receiving proof of a taxpayer's investment under subsection (e), the department of commerce shall issue the taxpayer a certificate indicating that the taxpayer has fulfilled the requirements of the department of commerce and that the taxpayer is entitled to a credit under this chapter.

(g) A taxpayer forfeits the right to a tax credit attributable to an investment certified under subsection (c) if the taxpayer fails to make the proposed investment within the period required under subsection (d)."

Page 4, line 4, strike "(a)".

Page 4, strike line 9.

Page 4, line 10, strike "qualified Indiana business" and insert "a copy of the certificate issued by the department of commerce to the taxpayer under section 12.5(f) of this chapter".

Page 4, strike lines 13 through 19.

Page 4, line 20, strike "credit filed later in that calendar year may not be approved."

Page 4, line 20, delete "However,".

Page 4, delete lines 21 through 23, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE JANUARY 1, 2003



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(RETROACTIVE)] (a) Notwithstanding P.L.192-2002(ss), SECTION 207, IC 6-3.1-24, as added by P.L.192-2002(ss), SECTION 119, applies to taxable years beginning after December 31, 2002.

(b) The following statutes, all as amended by this act, apply to taxable years beginning after December 31, 2002:

- (1) IC 6-3.1-24-5.
- (2) IC 6-3.1-24-6.
- (3) IC 6-3.1-24-7.
- (4) IC 6-3.1-24-9.
- (5) IC 6-3.1-24-12.
- (6) IC 6-3.1-24-13.

(c) IC 6-3.1-24-12.5, as added by this act, applies to taxable years beginning after December 31, 2002."

Renumber all SECTIONS consecutively.

(Reference is to SB 386 as printed February 5, 2003.)

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